

From: ketcham-colwill.nancy@epamail.epa.gov
To: OGC_ARLO%EPA@aa.ad.epa.gov
Subject: Bob's legal opinion on CAA authority to issue climate change regulations
Date: Thursday, August 28, 2003 4:26:18 PM
Attachments: [CO2 General Counsel Opinion final. wpd.wpd](#)

It's signed, sealed and delivered. Next stop -- D.C. Circuit.

(See attached file: CO2 General Counsel Opinion final. wpd.wpd)

From: [Lisa K Friedman](mailto:Lisa.K.Friedman@epa.gov)
To: ketcham-colwill.nancy@epa.gov; embrey.patricia@epa.gov; friedman.lisa@epa.gov
Subject: CO2
Date: Saturday, May 17, 2003 8:25:05 AM

Thought you might be interested in the attached (which was written by an Earth Justice attorney and which I obtained through a circuitous route):

We recently obtained a decision in which - for the first time, as far as we've been able to determine - a US court has held that the US National Environmental Policy Act (NEPA) requires the government to assess the potential environmental impacts of CO2 emissions.

The case is one in which we challenged (on behalf of our clients) the adequacy of an environmental assessment of the US Department of Energy's granting of a permit for the transmission of electricity into the United States from power plants just (barely) across the border in Mexico. We argued that the government failed to assess adequately the environmental impacts of the generation of the power that would be transmitted across the lines, including the impacts of the CO2 emissions from the plants. The government argued that it need not assess the impacts of CO2 because the US EPA had not designated them as "criteria pollutants" under US air pollution regulations. In a decision that focused mostly on other reasons why the government's environmental assessment was inadequate, the court had this to say about CO2:

"The record shows that carbon dioxide is one of the pollutants emitted by a natural gas turbine and that it is a greenhouse gas. [footnote defining 'greenhouse gas'] Additionally, plaintiff argues that carbon dioxide emissions are the greatest by weight of all pollutants emitted by natural gas turbines, and charts from the record appear to support that argument. . . .

Because these emissions have potential environmental impacts and were indicated by the record, the Court finds that the [environmental assessment's] failure to disclose and analyze their significance is counter to NEPA." Border Power Plant Working Group v. Dept. of Energy, et al., No. 02-CV-513-EIG (POR), Order dated May 2, 2003 (US District Court for the Southern District of California).

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From: ketcham-colwill.nancy@epamail.epa.gov
To: Jaeger.Lisa@epamail.epa.gov; friedman.lisa@epamail.epa.gov; hannon.john@epamail.epa.gov; embrey.patricia@epamail.epa.gov
Subject: Final Petition Response
Date: Thursday, August 28, 2003 1:48:51 PM
Attachments: [CO2 petition response final.wpd](#)

Jeff has done the deed!

----- Forwarded by Nancy Ketcham-Colwill/DC/USEPA/US on 08/28/03 01:50 PM -----

Jeff Holmstead

08/28/03 01:49 PM

To: Prudence Goforth
cc: Bill Wehrum, Nancy Ketcham-Colwill/DC/USEPA/US@EPA
Subject: Final Petition Response

Here's the document I just signed.

(See attached file: CO2 petition response final.wpd)

From: ketcham-colwill.nancy@epamail.epa.gov
To: Goforth.Prudence@epamail.epa.gov; Wehrum.Bill@epamail.epa.gov; Jaeger.Lisa@epamail.epa.gov; Kumar.Chitra@epamail.epa.gov; Holmstead.Jeff@epamail.epa.gov
Cc: friedman.lisa@epamail.epa.gov; hannon.john@epamail.epa.gov; embrey.patricia@epamail.epa.gov; Wood.Deborah@epamail.epa.gov
Subject: FINALS of both documents
Date: Thursday, August 28, 2003 1:07:19 PM
Attachments: [co2petition.response8-28.final2.wpd](#)
[co2petition.GCmemo8-28.FINAL.wpd](#)

These are the real deal. Thanks to Chitra for catching a (hopefully) last typo.

(See attached file: co2petition.response8-28.final2.wpd)(See attached file: co2petition.GCmemo8-28.FINAL.wpd)

Prudence: The legal memo should be titled for web link purposes as "2003 General Counsel Legal Memorandum concerning Clean Air Act Authority to Regulate for Global Climate Change Purposes"

From: Embrey.Patricia@epamail.epa.gov
To: Ketcham-Colwill.Nancy@epamail.epa.gov
Subject: Re: prebrief with Margo
Date: Monday, February 25, 2002 11:58:50 AM

I have another obligation at that time -- have fun!

 Nancy Ketcham-Colwill

Nancy Ketcham-Colwill To: Patricia Embrey/DC/USEPA/US@EPA, John
Hannon/DC/USEPA/US@EPA
02/21/02 10:25 AM cc:
Subject: prebrief with Margo

Margo is meeting with her staff on Monday from 1-2 to discuss what options to present Jeff on the CO2 petition now that the Administration has come out with a climate change policy that (surprise!) doesn't include GHG emission standards or even CAFE increases. I'm on the "optional" invite list. I plan to go. Let me know if you're interested.